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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,080	07/24/2003	David C. Eby	29618/38939	9963

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MARSHALL, GERSTEIN & BORUN LLP  
233 S. WACKER DRIVE, SUITE 6300  
SEARS TOWER  
CHICAGO, IL 60606

EXAMINER

QUINN, COLLEEN M

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 10/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/626,080

Applicant(s)

EBY ET AL.

Examiner

Colleen M. Quinn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5-21, 24, 27, 29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-21, 24, 27, 29 and 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/3/03 &amp; 4/4/05</u>                                      | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

This Office action is in response to amendments filed August 10<sup>th</sup>, 2006, in which claims 1-4, 22-23, 25-26, 28 and 31-33 were cancelled and claims 5, 7, 12, 24 and 27 were amended.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5-15, 17-21, 24, 27 and 29-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Ainsworth (US 2,149,489).

Regarding claims 5- 6 and 24 Ainsworth discloses a file organizer, comprising a plate (2), having a first side (outer edge of file organizer) and a second side (distal end of plate), a plurality of flexible (Specification, page 1, column 2, lines 44-50), vanes (Figure 1), disposed between the two ends and being attached to a respective first end (Figure 1), an elastic band (16) releasably attached to the plate on the first end (18) and second end (17; Figures 1 & 10), wherein the vanes are releasably securable against the plate by disposing the band across the vanes and releasably disposing the band on the catch (Specification, page 1, column 1, lines 13- 31).

Regarding claims 7-11, Ainsworth discloses a file organizer, comprising a plate (2), having a first side (outer edge of file organizer) and a second side (distal end of plate), a plurality of flexible (Specification, page 1, column 2, lines 44-50), vanes (Figure

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1), disposed between the two ends and being attached to a respective first end (Figure 1), an elastic band (16) releasably attached to the plate on the first end (18) and second end (17; Figures 1 & 10), wherein the vanes are releasably securable against the plate by disposing the band across the vanes and releasably disposing the band on the catch (Specification, page 1, column 1, lines 13- 31). The elastic band having two ends and reinforced with a stiff material, such as a metal tube, (Figure 1 & Specification, page 2, column 1, lines 18-23) is disposed over the catch and stretched over the vanes (Figure 1), wherein, the catch (17) is disposed in an opening in the plate (Specification, page 2, column 1, lines 39-47).

Regarding claims 12-15 and 17, Ainsworth discloses a file organizer, comprising a plate (2), having a first side (outer edge of file organizer) and a second side (distal end of plate), a plurality of flexible (Specification, page 1, column 2, lines 44-50), vanes (Figure 1), disposed between the two ends and being attached to a respective first end (Figure 1), an elastic band (16) releasably attached to the plate on the first end (18) and second end (17; Figures 1 & 10), wherein the vanes are releasably securable against the plate by disposing the band across the vanes and releasably disposing the band on the catch (Specification, page 1, column 1, lines 13- 31). The elastic band having two ends and reinforced with a stiff material, such as a metal tube, (Figure 1 & Specification, page 2, column 1, lines 18-23) is disposed over the catch and stretched over the vanes (Figure 1), wherein, the catch (17) is disposed in an opening in the plate (Specification, page 2, column 1, lines 39-47). The plate includes a plurality of slots along the plate for each vane (Figure 1), wherein the vanes include a tongue (15) and at

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least two tabs (unnumbered tabs between angled cuts, as best seen in Figure 1) configured between the slots.

Regarding claims 18-21, Ainsworth discloses a file organizer, comprising a plate (2), having a first side (outer edge of file organizer) and a second side (distal end of plate), a plurality of flexible (Specification, page 1, column 2, lines 44-50), vanes (Figure 1), disposed between the two ends and being attached to a respective first end (Figure 1), an elastic band (16) releasably attached to the plate on the first end (18) and second end (17; Figures 1 & 10), wherein the vanes are releasably securable against the plate by disposing the band across the vanes and releasably disposing the band on the catch (Specification, page 1, column 1, lines 13- 31). The elastic band having two ends and reinforced with a stiff material, such as a metal tube, (Figure 1 & Specification, page 2, column 1, lines 18-23) is disposed over the catch and stretched over the vanes (Figure 1), wherein, the catches the band releasably attaches to are disposed in a single opening in the first side of the plate (opening through which 18 is connected) and a pair of openings in the second side of the plate (openings through which catches 17 are connected; Specification, page 2, column 1, lines 39-47). The plate includes a plurality of slots along the plate for each vane (Figure 1), wherein the vanes include a tongue (15) and at least two tabs configured adjacent the slots (unnumbered tabs between angled cuts, as best seen in Figure 1).

Regarding claims 27, 29 and 30, Ainsworth discloses a file organizer, comprising two plate portions (2 & 3), divided by a fold line (4), the plates having a first side (outer edges of file organizer) and a second side (inner end of each plate), a plurality of

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flexible (Specification, page 1, column 2, lines 44-50), vanes (Figure 1), disposed between the two ends and being attached to a respective first end (Figure 1), a handle (18) disposed in the first end, comprising a section of the plate extending outwardly from the plurality of vanes and further including an opening (hole in which handle is disposed). The file organizer further comprises an elastic band (16) releasably attached (17) to the second end and hooked to a catch (23) on the handle (18) on the first end, allowing the user to carry the file organizer upright to a new location.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ainsworth as applied to claims 5-15, 17-21, 24, 27 and 29-30 above, and further in view of the MPEP 2144.04 Sections IV (A) & I. Ainsworth fails to disclose the vanes being disposed approximately one inch apart. MPEP 2144.04 Section IV (A) & I teach that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art, as well as mere scaling of dimensions cannot be relied upon to patentably distinguish from prior art. It would have been obvious to space the vanes of a file organizer to whatever dimension appropriate for the files being organized. Therefore, it would have been

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obvious, to one of ordinary skill, to space the vanes of Ainsworth to appropriate dimensions, depending on the size of the files being organized.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. In addition the prior art used in the rejection above, the applicant is encouraged to also review the work of Consoli (US 4,763,888), Larter (US 3,000,509) and Van Harlingen (US 522,717), all of which present various forms of file organizers, including key features of the applicant's claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Colleen M. Quinn whose telephone number is (571) 272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on (571) 272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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CMQ  
10/21/06

  
Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600